

USAWC STRATEGY RESEARCH PROJECT

CONTRACTING TO REBUILD A NATION:
THE ROLES AND RESPONSIBILITIES OF U.S.
CONTRACTING ACTIVITIES IN IRAQ

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ABSTRACT

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On March 19, 2003, the United States (U.S.) and its Coalition partners began the attack to replace a cruel and evil dictator in Iraq. In a short period of time, Saddam Hussein and many of the former members of his regime were in jail or dead. However, the long term task of securing, stabilizing, and rebuilding the nation continues. To persecute the war and conduct the follow-on rebuilding, the Unites States is committing billions of dollars to set the conditions for success. Much of this sum will be put on contracts. Proper oversight and execution of the contracts will be crucial to the overall long term success of the mission.

The purpose of this research project is to examine the contract management structure U.S. forces are using in Iraq. As such, the report will focus on the funding authorized, the roles and responsibilities of the various contracting activities, the types and methods of ongoing contracts and the various oversight requirements. The report concludes with recommendations to produce a more unified and streamlined structure that provides greater transparency and efficiency in the management of military contracts as the U.S. moves forward to rebuild Iraq.

The U.S., in partnership with the new sovereign Iraqi government and other coalition partners are executing the highly complex and costly task of rebuilding Iraq. All parties involved are investing considerable amounts of time, efforts, and money to ensure success. The success of this undertaking is paramount towards maintaining U.S. prestige around the world, continuing the war on terrorism, and allowing the people of Iraq to live in a peaceful, stable nation under good governance. There is a lot of work to be done. Although the U.S. and its coalition partners “won” the tactical and operational battles, this can still lead to a strategic “loss” if the post-conflict operations of providing security and rebuilding are poorly executed.

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CONTRACTING TO REBUILD A NATION: THE ROLES AND RESPONSIBILITIES OF U.S. CONTRACTING ACTIVITIES IN IRAQ

A free Iraq in a part of the world that's desperate for freedom is an historic opportunity.

- President George W. Bush

On March 19, 2003, the United States (U.S.) and its Coalition partners began the attack to replace a cruel and evil dictator in Iraq. In a short period of time, Saddam Hussein and many of the former members of his regime were in jail or dead. However, the long term task of securing, stabilizing, and rebuilding the nation continues. Rebuilding Iraq is a critical national security issue and a key component of the U.S. war on terror. A free and stable Iraq has become one of President Bush's foreign policy priorities.¹ To persecute the war and conduct the follow-on rebuilding, the United States is committing billions of dollars to set the conditions for success. A recent report from the Department of Defense Comptroller's office concluded the costs averaged \$4.8 billion per month in Fiscal Year (FY) 2004. All indications are that the figure could be even higher in FY2005.² Much of this sum will be put on contracts. Proper oversight and execution of the contracts will be crucial to the overall long term success of the mission.

The purpose of this research project is to examine the contract management structure U.S. forces are using in Iraq. As such, the report will focus on the funding authorized, the roles and responsibilities of the various contracting activities, the types and methods of ongoing contracts and the various oversight requirements. The report will conclude with recommendations to produce a more unified and streamlined structure that will provide greater transparency and efficiency in the management of military contracts as the U.S. moves forward to rebuild Iraq.

On May 24, 2004, President Bush outlined a plan to help Iraq achieve democracy and freedom. The plan had five critical components: to transfer authority to a sovereign Iraqi government (which was subsequently accomplished on June 28, 2004); to help establish security; to encourage more international support; to move toward a national election; and to rebuild Iraq's infrastructure.³ The following section discusses the funding sources that will enable the accomplishment of those five components. Due to the nature of the contracts and the oversight roles of the U.S. forces, this research project will restrict the funding discussion to those funding activities that U.S. forces have oversight. Those are on contracts primarily in two of the five components: helping to establish security and rebuilding Iraq's infrastructure.

FUNDING

The funding for the rebuilding of Iraq comes primarily from four sources.⁴ The first is through U.S. Congressionally appropriated funds. The most significant of which is Public Law 108-106, *The Emergency Supplemental Appropriations Act for Defense and the Reconstruction of Iraq and Afghanistan, 2004*. Second is the Iraqi budget which receives its funds from the Development Fund for Iraq (DFI). Third is through the deployed U.S. forces and their ongoing sustainment. Fourth is through other international contributions. This project will discuss those oversight functions regarding the first three sources of funds because the management execution and oversight are within the limits of U.S. agencies with collaboration with the sovereign Iraqi government. The fourth source, international contributions, is beyond the day to day oversight of U.S. government agencies and will not be addressed.

Public Law 108-106, *The Emergency Supplemental Appropriations Act for Defense and the Reconstruction of Iraq and Afghanistan, 2004*, provides over \$18.4 billion for security, relief, rehabilitation and reconstruction of Iraq. The Law allocates the funding into 10 separate areas. The allocation breakdown is: \$3.2 billion for security and law enforcement; \$1.3 billion for justice, public safety infrastructure, and civil society; \$5.6 billion for the electric sector; \$1.9 billion for oil reconstruction; \$4.3 billion for water resources and sanitation; \$500 million for transportation and telecommunications; \$370 million for roads, bridges, and construction; \$793 million for health care; \$153 million for private sector development; and \$280 million for education, refugees, human rights, and governance.⁵

Congress placed significant provisions on the use of these funds. For example, there are fourteen specific provisions on the use of the funds. Of particular note are two requirements. The first is the restriction of the reallocation of funds. The restriction states that the President may reallocate up to ten percent of any of the above allocations; however, the President may not increase any of the allocations by more than twenty percent. Only in the event of unforeseen or emergency circumstances does the law allow the President to reallocate only one allocation up to twenty percent.⁶ This restriction limits the administration's freedom of action to exploit opportunities. Although the restrictions were well meaning at the start of the reconstruction effort, they may have outlived their usefulness. For example, as other nations increase their contributions and the Iraqi government matures, there may be opportunities to move funds to achieve a greater long term good which is now denied by the congressional restrictions.

Section 2207 of the law stipulates the second significant oversight requirement Congress placed in the Emergency Supplemental Appropriations Act. Section 2207 of Public Law 108-

106 requires the Office of Management and Budget (OMB) to submit a quarterly report to Congress that updates the estimates and assumptions for the \$18.4 billion appropriated for the Iraq Relief Reconstruction Fund (IRRF).⁷ OMB submitted the first report to Congress on January 5, 2004.

The second major source of funding is through the Iraqi budget itself, commonly referred to as the DFI. The United Nations Security Council Resolution (UNSCR) 1483 established the DFI to protect Iraq's overseas assets and oil revenue from seizure by creditors. Funding towards the DFI comes from proceeds from oil export sales and transfers from uncommitted balances in Iraq's oil-for-food program. The DFI is the primary source of funds to operate the Iraqi government and according to UNSCR 1483, the Iraqi government can only use the funds for humanitarian assistance, economic reconstruction, civil administration, and other purposes to benefit the Iraqi people.⁸

The DFI helps fund two programs that have proven very successful in achieving reconstruction goals. The first is the Commander's Emergency Response Program (CERP) and the second is the Accelerated Iraqi Reconstruction Program (AIRP). The purpose of the CERP is to provide funds to U.S. military commanders in Iraq so they can conduct urgent humanitarian relief and reconstruction activities within their areas of responsibility. These programs are typically low cost, grassroots type projects so the local populace can see quick results. As stated by Marine Captain David Romley, "Any soldier on patrol who notices that a water pump is not working can go to the commander and say "I think it would help this place a lot if that pump was repaired."⁹ Division commanders are allocated \$500,000 each and Brigade commanders are allocated \$200,000 each. The commanders receive these funds under standard procedures to ensure proper accountability and oversight. As of June 19, 2004, Commanders initiated over 27,600 small projects ranging from repairing sewer lines, upgrading schools and clinics, refurbishing playgrounds and youth centers, to buying police radios and firefighting equipment.¹⁰ Nearly \$1 billion has been allocated towards the CERP program to date: \$179 million of seized Iraqi funds, \$361 million from the DFI, and \$440 million from U.S appropriated funds.¹¹ Congress also placed the requirement on the Secretary of Defense to provide a quarterly report to congress outlining the source and allocation of funds.¹²

The second major funding activity of the DFI is the AIRP. The AIRP is similar to the CERP in the sense the emphasis is on projects that can be quickly accomplished to improve the lives of the people by creating jobs and providing security. However, the key difference is that the AIRP concentrates on high impact projects in key cities such as Baghdad, Fallujah, Tikrit,

and Najaf. So far, the Iraqi government, in conjunction with the U.S., has allocated almost \$300 million for AIRP projects.¹³

The third source of funds for rebuilding Iraq comes from the deployed U.S. forces and their ongoing sustainment. These typically are from three areas: Theater Support, External Support, and Systems Support.¹⁴ Theater support are those contracts such as the Army's Logistics Civil Augmentation Program (LOGCAP) contract designed to provide specific functions and services such as providing food and water for an organization, installation or agency. External Support are those contracts let to companies made up of third country nationals and host nation citizens hired to perform services for an organization, installation or agency. The third type of contract is the systems support contract. The systems support contracts are normally let by Program Managers and designed to support specific systems in theater such as tanks and Bradley Fighting Vehicles.

CONTRACTING AND OVERSIGHT ORGANIZATIONS

The following section describes the missions of the primary contracting offices involved with Iraq reconstruction and the offices executing oversight of the contracts. This will include the descriptions, roles, responsibilities, and interrelationships of the Project and Contracting Office (PCO), Iraqi Reconstruction Management Office (IRMO), U.S. Army Corps of Engineers (USACE), United States Agency for International Development (USAID), Defense Contract Management Agency (DCMA), Defense Contract Audit Agency (DCAA), and the Army Contingency Contracting Office. The first two agencies discussed are the PCO and the IRMO. President Bush established both offices as part of his National Security Presidential Directive (NSPD) dated May 11, 2004.

The purpose of the NSPD was to clarify U.S. government operations in Iraq after the termination of the Coalition Provisional Authority (CPA) and the re-establishment of diplomatic relations between the United States and a sovereign Iraqi government.¹⁵ The NSPD outlined seven critical functions necessary for the continued, synchronized inter-agency effort to ensure the successful Iraqi transition to democracy. The seven points are: first, establish a Chief of Mission in Iraq at the termination of the CPA (The CPA officially dissolved on June 28, 2004 when it transferred power to the sovereign Iraqi interim government.¹⁶). Second, the NSPD directed the Commander, United States Central Command (USCENTCOM) to continue his responsibility for U.S. efforts for security and military operations in Iraq. Third, the directive made the Secretary of State responsible for the continuous supervision and general direction of all assistance for Iraq. Fourth, the NSPD assigned the U.S. mission and Secretary of State

those continued responsibilities of the former CPA. Fifth, the directive established the IRMO under the Department of State. Sixth, the NSPD established the PCO (formerly called the Program Management Office) under the Department of Defense. Finally, seventh, it directed all government agencies assist with strong inter-agency support.¹⁷

Mr. Charles Hess is currently the Director of the PCO. The mission of the PCO is, "To serve the people of the United States and Iraq by contracting for and delivering services, supplies, and infrastructure identified within the \$18.44 billion Iraqi Relief and Reconstruction Fund (IRRF), allocated by the U.S. government and taxpaying public, for the rebuilding of Iraq."¹⁸ The PCO is responsible to manage approximately \$12.6 billion of the \$18.44 billion. The PCO office has three objectives: first, to improve the infrastructure of Iraq; second, to increase Iraqi employment; and third, to build Iraqi capacity in the areas of industry, engineering and training in order to maintain the new infrastructure so that they become self-sustaining.¹⁹ As of January 12, 2005, there has been a total of over \$10.4 billion in funds obligated for 1550 construction starts that employ over 103,000 Iraqi workers.²⁰ The PCO has a dual reporting relationship with the Departments of State and Defense. While the PCO is responsible for program execution, the Department of Defense oversees the contracting and program management. The PCO then works with the State Department for funding priorities and requirements.²¹

In order to facilitate the management of contracts, the PCO established six sub-areas and awarded contracts on March 10, 2004 to specific contractors to help provide technical development, review, and support. Those areas include a PCO services contract to Iraq Power Alliance Joint Venture for up to \$55 million to provide support in the electrical sector. In the area of public works and water projects, the PCO awarded a contract up to \$55 million to CH2M Hill and PWI Joint Venture. In the area of communications and transportation, the PCO awarded a contract to Berger/ URS Joint Venture for up to \$15 million. Berger/ URS was also awarded a contract for up to \$15 million to assist in the areas of buildings, education and health and a third contract of up to \$30 million to assist in the areas of security and justice. The PCO awarded the final contract to Foster Wheeler for up to \$30 million for the oil industry.²²

In order to establish unity of effort and ensure equitable prioritization of resources, the Deputy Secretary of Defense designated the Secretary of the Army as the Executive Agent for the Office of Reconstruction and Humanitarian Assistance on May 21, 2003. This office was the precursor to the Coalition Provisional Authority (CPA) in Iraq. To assist the CPA, on January 14, 2004, The Deputy Secretary of Defense assigned responsibility to the Department of the Army (DA) for acquisition and program management support for the CPA to the Secretary of the

Army.²³ The Executive Agent responsibility carried on as the CPA transformed into the Project and Contracting Office. The USCENTCOM and the DA reviewed the contract functions in Iraq and determined that there would be a substantial demand for scarce contracting assets. Both agencies set out to create a centralized contracting organization with complete visibility over all contracting efforts for forces in Iraq to ensure unity of contracting effort.²⁴ As such, in an October 27, 2004, memorandum, the Assistant Secretary of the Army (Acquisition, Logistics and Technology), the Honorable Claude M. Bolton, Jr. appointed Brigadier General Stephen M. Seay as the Head of Contracting Activity (HCA) for Iraq.²⁵

The HCA is a General Officer, usually the senior commander in theater or designated by the commander, who provides overall guidance for contracting activities and is the approving authority for contracting as stated in regulatory contracting guidance.²⁶ As the HCA for Iraq, BG Seay was further designated as Commander, Joint Contracting Command – Iraq (JCC-I). The Commander JCC-I is also responsible to establish reporting requirements and coordinate common procedures for service component contracting offices and other coalition partners. The purpose of coordinating common procedures among the service components is to increase visibility of contracting efforts while not conflicting with service unique Title 10 authorities.²⁷

Mr. Bolton also directed the HCA to appoint two Principal Assistants Responsible for Contracting (PARCs). The first PARC is the PARC – Reconstruction and supports the Project and Contracting Office. The PARC – Reconstruction supervises the Baghdad, Kirkuk, Basra, and Hillah reconstruction offices and provides program support to the six sector areas for the PCO (electrical; public works, water; communications and transportation; buildings, education, health; security, justice; and oil). The second PARC is the PARC – Forces and supports the Commander, Multi-National Force Iraq (MNF-I). The PARC – Forces is responsible for three areas: theater contracts, operations (those being in MNSTC-I, Camp Victory, Babylon, Kirkuk, Taji, Tikrit, Baghdad, Balad, Mosul, Tallil, and Ramadi), and programs.²⁸ The PARCs are special staff officers and are the senior acquisition advisors to the director of the PCO and Commander MNF-I for contracting activities.

Reporting to the PARCs on contracting matters are the contracting officers. Contracting authority, separate and distinct from the normal chain of command, flows from the HCA to the PARC's and then to the contracting personnel within each organization. According to the Army Contracting Agency's "Customer's Guide", "Only contracting officers have the authority to enter into, administer, or terminate contracts and make related determinations and findings."²⁹ The delegation of contracting authority from the PARCs to the contracting officers is called the Contracting Officer's warrant. The warrant is the statutory requirement that allows the obligation

of U.S. government appropriated funds. While the warrant provides the authority to enter into contracts, the warrant also provides the limitations on the contracting officer and he can not legally exceed the limits of his authority.³⁰

The PARC has functional control over the contracting officers. All contracting personnel must coordinate their activities with the PARC, normally through an Acquisition Review Board (ARB) and follow the PARCs contracting support plan.³¹ By having one line of contracting authority from the Commander, Commander JCC-I, through the PARCs, supporting the PCO and MNF-I, the Department of Defense attempted to ensure a unity of contracting effort.³² This framework allows for centralized planning but decentralized execution using best business practices.

In order to achieve operating efficiencies and reduce the number of personnel necessary to support the Iraq mission, Mr. Bolton directed three additional requirements. First, the two PARCs coordinate their efforts to reduce resource requirements. Second, the Commander JCC-I coordinate with the Defense Contract Management Agency (DCMA) for all delegated contracts. Third, the Commander JCC-I coordinate with the USACE Gulf Region Division (GRD), Directorate of Contracting, for the delegation of contract management in support of Iraq reconstruction.³³ Both the DCMA and the USACE GRD support the JCC-I with contract administration support. Additionally, along with the two PARC's as mentioned above, Commander JCC-I also has a USACE Chief of Contracting reporting to him. The USACE chief of contracting is for those PCO funded Corps of Engineer projects. All other contracts remain with the Corps of Engineers.

The mission of the USACE GRD is fivefold. First, the Directorate of Oil assists the Iraqi Ministry of Oil by developing, maintaining, and protecting the oil exportation and refining system in Iraq. Eventually, oil exports are expected to reach more than \$30 billion per year and provide funding for the continued rebuilding of Iraq. The Directorate of Electricity assists the Iraqi Ministry of Electricity by restoring transmission lines, improving or replacing switching facilities, and restoring more than 30 different power generation projects after years of neglect. The goal is to provide 25 million citizens of Iraq uninterrupted power. The Directorate of Construction serves as the construction management representative to the PCO. The GRD has six sector construction managers on the six project delivery teams that are aligned with the six sectors of the PCO: oil, electricity, communications and transportation, public works, and buildings. They are accountable and responsible for the construction phase of each. Additionally, the USACE GRD supports MNF-I and the USAID in a variety of infrastructure projects by assisting in planning and construction management.³⁴

The USAID provides economic and humanitarian assistance in more than 100 countries. In Iraq, the USAID is part of the U.S. embassy and works with the Iraqi government, coalition forces, United Nations, World Bank, International Monetary Fund, other coalition partners, nongovernmental organizations and private sector partners. According to the USAID assistance for Iraq website, the USAID's mission in Iraq is to carry out education, health care, food security, infrastructure reconstruction, airport and seaport management, economic growth, community development, local governance, and transition initiatives.³⁵ The USAID provides a weekly web update on its activities in Iraq.

As of the January 12, 2005 weekly update, the total USAID assistance to Iraq from 2003 through 2005 has been over \$4.6 billion.³⁶ The weekly update provides the current status of ongoing projects and lists completed projects to date. For example, three completed activities described in the report dealt with seaport improvements, telecommunications, and food distribution. In the area of seaport improvement, the report discusses the June 2004 completion of a \$45 million program to rehabilitate and improve Umm Qasr seaport. Today, up to 50 ships per month offload at the port. In the area of telecommunications, the USAID completed an audit of over 1,200 kilometers of a fiber optic network and completed repairs to reconnect 20 cities and 70 percent of the population. Third, in the area of food security, the USAID worked with the World Food program and coalition forces to re-establish the Public Distribution System (PDS) in less than 30 days in order to avoid what could have been a potential humanitarian food crisis. The USAID continues to work with the U.S. Embassy in Iraq and the Iraqi Ministry of Trade to improve the PDS management.³⁷ However, it should be noted that there is no formal relationship between the JCC-I and USAID, nor is there any oversight by DCMA. The PCO and USAID take their direction and priorities from the IRMO. The IRMO reports to the Iraq Chief of Mission.³⁸

With the billions of dollars on contract in Iraq, one of the agencies most responsible for contract oversight is the DCMA. Brigadier General (RET) Edward M. Harrington, a former DCMA Director once noted, "Our mission is to provide customer-focused acquisition support and contract management services to ensure warfighter readiness, 24/7 worldwide. We help our customers achieve the results they are after by supporting them from acquisition planning all the way through product delivery and contract close-out."³⁹ The DCMA ensures that contractors and suppliers deliver weapon systems, services and supplies to the warfighter at the right place, the right time, and for the best price.⁴⁰ They have the capabilities to assist their customers both before and after contracts are signed. Before the contract, DCMA helps the customer write effective solicitations, identify capable companies and write up the contracts.

After the contract is signed, the DCMA can assist by monitoring the contractor's performance, performing analysis, conducting on site visits, accept product, and facilitate contractor payments.

The agency has its headquarters in Northern Virginia and has three districts. The East District headquarters is in Boston, Massachusetts; the West District office is in Carson, California; the International District headquarters is co-located with the main headquarters in Northern Virginia. There are also 67 Contract Management Offices (CMOs) around the world. The DCMA has an extensive network in order to provide support. There are approximately 11,400 contract management professional throughout the United States and 400 personnel in 26 foreign countries. At the close of 2004, DCMA managed over 325,000 prime contracts worth approximately one trillion dollars.⁴¹

The Department of Defense (DoD) established DCMA as an independent combat support agency on March 27, 2000. The DCMA is one of only seven combat support agencies. Two people provide oversight to DCMA. The DCMA receives functional oversight and direction from the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics. However, in its combat support agency role, it also receives operational oversight under the supervision of the Chairman of the Joint Chiefs of Staff (CJCS). The Joint Staff and Combatant Commanders are now DCMA's direct customers and they are responsible to oversee the operational activities.⁴² To support the warfighter in times of deployments, DCMA organizes deployable teams to augment the existing CMO staffs. These teams are called Contingency Contract Administration Services teams and are made up of active duty, reservists and civilians who are all Defense Acquisition Workforce Improvement Act qualified. The teams deploy, live under the same conditions as the soldiers they support, and provide a full range of contract management and services.⁴³ As is the case in Iraq today, there was no existing CMO staff to augment. In this case, DCMA relies on uniform personnel as well as DCMA civilian volunteers to build the team that is now functioning in Iraq.

For example, the current DCMA footprint in Iraq is divided into geographic areas with teams to support each. The footprint illustrates the coverage, how well the DCMA representatives deploy to support their customers, and the diversity of their customers. The first area is called the central area and is primarily Baghdad. This is where DCMA has their headquarters and representatives assisting customers such as the PCO, State Department, MNF-1, and the United Nations. The second area is DCMA Northern Iraq covering the areas as far north as Mosul extending south down to Fallujah and Baghdad. Their customers are not only Army units but Marines, the Embassy, MNF-1, and the Defense Intelligence Agency. The

third sector is DCMA Southern. They provide support as far north as Karbala and Al Hillah and extend south down to Basra and Umm Qasr.⁴⁴ Typical support missions include contract oversight in terms of cost, performance, and schedule, reviewing and approving LOGCAP purchase requisitions, monitor government property, and provide input to award fee boards.⁴⁵

The DCMA support in theater to LOGCAP and the PCO provides two examples of the type of assistance DCMA provides. DCMA oversees nine active Task Order contracts under LOGCAP III and AFCAP. DCMA provides functional support in terms of contract administration, quality assurance, and tracking government property. For each LOGCAP task order, the DCMA team tracks technical, cost, and management performance for their customers. For the PCO, DCMA assists in developing acquisition plans, as well as standard operating procedures for logistics, payments, and CMO delegations to ensure correct delivery, administration, payment, and close-out.⁴⁶

Along with the DCMA contracting team, there is another set of contracting officers in support of the operational units. They are the contingency contracting officers. The major responsibilities of the contracting officer include: interpret the contract, obligate the government for work, delegate contract administration, ensure the contractor corrects cited deficiencies, and provides the award fee board with input.⁴⁷ The contracting officers are part of the Army Contracting Agency. The Army Contracting Agency is a field operating agency that reports to the Assistant Secretary of the Army for Acquisition, Logistics and Technology. The Agency's mission is to provide efficient and effective contracting support to Army installations, information technology users and the warfighters deployed in a contingency environment.⁴⁸ To support the warfighter, there are contingency contracting officers at the Theater Support Command, Corps Support Commands, and at Divisional level. Their contracting authority chain mirrors the chain of command. However, the contracting authority, not command authority, flows from the HCA, through the PARC to the respective contracting sections.

In Iraq, CENTCOM designated the Army as the lead service for contracting. As discussed above, the PARC then consolidated the contracting activities into joint contracting centers. By doing so, the PARC can employ contingency contracting personnel from all services in accordance with the theater contracting plan. However, the contracting personnel from the USACE, Medical Command, Defense Contract Management Agency, and Program Management Offices maintain their procurement authority with their command but work under the PARCs functional control in Theater.⁴⁹ The PARC's functional control requires all contracting personnel in theater to coordinate their actions with the PARC through the ARB and follow the PARCs contracting support plan. The PARCs centralized control is to preclude units

from competing with one another for the same resources and ensures available resources are properly prioritized to the right unit.⁵⁰

One of the most important contingency contracting tools available to the commander in Iraq to support U.S. forces is the LOGCAP. The Air Force and Navy have similar programs called AFCAP and CONCAP respectively. These type contracts are awarded prior to contingency operations so that they are available to support troops as needed. The contract support in Iraq is the largest effort in the history of these type contracts.⁵¹ The LOGCAP program provides vital support to deployed soldiers by having a contract vehicle in place in order to provide responsive quality of life improvements for soldiers in contingency operations all over the world. The Army is currently in its third LOGCAP contract. LOGCAP I covered from 1991 through 1996, LOGCAP II covered from 1997 through 2001 and LOGCAP III covers the period from 2002 through the present. The U.S. Army Materiel Command competitively awarded the LOGCAP III contract to Brown & Root Services, Inc (now known as Kellogg, Brown & Root (KBR) ON December 14, 2001. Today KBR has over 20,000 employees and subcontractor employees deployed worldwide to support U.S. forces.⁵²

The LOGCAP contract separates the potential support requirements into three broad areas. Those areas are supply operations, field services, and operations and services. The nature of the contract allows commanders the flexibility to decide what is needed depending on the situation. By having a contract such as this, the government has a contract vehicle in place to rapidly satisfy a wide range of needs. The contract is an indefinite delivery, indefinite quantity contract (ID/IQ). By Using an ID/ IQ type contract, the customer can immediately set requirements within the scope of the contract without any other competition involved.⁵³ The Army pays for work performed and nothing is charged to the contract otherwise. The requirements are placed under the contract as separate task orders. The task orders can be placed under cost-plus-award-fee, firm-fixed price, or cost-plus-fixed-fee contracts.⁵⁴ Normally under contingency operations where there is an extremely fluid environment and it is difficult with any precision to define a set of stable requirements a cost-plus-award-fee type contract is appropriate. The cost-plus-award-fee contract stipulates specific criteria used by the government to determine performance. The government then provides an award to the contractor based on performance against the established guidelines. This provides a valuable tool for the government while providing a financial incentive to the contractor.

There is a well established procedure in place for the commander to use LOGCAP. First, the user develops a set of requirements for support based on the operational situation. He then examines other alternatives such as deciding if his own organic support, the reserve

component, or host nation can satisfy the requirement. Once the user determines that LOGCAP is the appropriate solution, the user writes a statement of work. At this point, it is normally better for the user to consult and have LOGCAP contractors help in the development of the statement of work for a couple of reasons. Working in a collaborative effort ensures that the LOGCAP representatives, clearly understand what is expected, can use their experience to help the user clarify the requirements, and can respond back with a more realistic cost estimate of the work to be performed. Additionally, the quality of service should improve as the contractor is more familiar with customer needs.

The user then forwards the statement to the Army Deputy Chief of Staff, Logistics (G4), who reviews and then forwards to the U.S. Army Field Support Command's LOGCAP contracting office which is part of Army Materiel Command. Contracting officers in the LOGCAP office then review the scope of work to ensure all legal and contractual requirements are met before sending the scope of work to KBR for a rough order of magnitude cost estimate and a technical execution plan. The contractor develops his solution and sends it back to the LOGCAP office. Once the user and contractor agreed to a cost and technical solution, the government transfers funds to the contractor and issues the order to proceed. An important point is that in a contingency environment, the agreed to cost becomes a "not to exceed" cost until the user and the contractor can define the requirement in more detail. Although this description can sound lengthy, if there is an urgent need, the process can take as little as 72 hours.⁵⁵

There are four critical players the government uses to ensure successful LOGCAP contract oversight. The players are the user, DCMA, the Defense Contract Audit Agency, and the contractor. The user is important because all requirements flow from the user. The better he is able to articulate and refine the requirements the better the understanding of the work at hand by all involved. The user is also important because the user evaluates the contractor's performance and is in the best position to ensure the contract is used in an economical and efficient manner.⁵⁶ The DCMA also plays a major role in the contract oversight by providing assistance from the start of the contract through technical reviews of contractor cost proposals, daily oversight of compliance to the contract, review and approve all requisitions over \$2500, evaluate and manage quality assurance, and monitor the use of government property acquired under the contract. The Defense Contract Audit Agency (DCAA) assists the procuring contracting officer by auditing the contractor's proposal during the definitization process and at the end of the contract to determine the final payment to the contractor. The DCAA audits all costs to determine those costs which are allocable, allowable and reasonably incurred under the

contract. If any incurred costs do not meet these three criteria, they will not be covered. The DCAA also approves the contractors cost estimating and accounting systems and the contractor's payment vouchers prior to sending them to the Defense Finance and Accounting Service for payment.⁵⁷

The fourth key player in ensuring successful oversight is the contractor themselves. The government places several incentives on the contractor to control costs and provide outstanding performance. First, To control costs and ensure stability of sources of supply, KBR is able to requisition materiel from the government supply system and order from the General Services Administration supply schedules. Second, the contractor must account for all costs using federal cost accounting standards and generally accepted accounting principles. Third, the government requires KBR to maintain adequate accounting, purchasing, and invoicing systems. Fourth, past cost control performance can be selection criteria for future contracts. An established record of excellent cost control improves the chances of a contractor winning future contracts.

Due to the intense congressional interest to ensure the Iraq reconstruction contracts and the military's use of logistical support contracts are properly awarded and administered, the Government Accounting Office (GAO) has conducted several studies to examine if proper compliance of laws and procedures were followed. The GAO focused their studies in two areas. The first report reviewed the use of full and open competition and contract oversight metrics such as quality assurance plans, requirements for monthly status reports, and subcontractor management plans used in the initial reconstruction projects in 2003 and the second study reviewed the use of LOGCAP planning.

In the first study, the GAO selected 25 contract actions, of which 14 were new contracts awarded using other than full and open competition and 11 were task orders issued under previous existing contracts. The contracts represented a cross section taken from the Department of Defense, State, USAID, CPA, and the Department of Justice. The 25 contracts represented approximately 97 percent of the total reconstruction dollars obligated through September 2003.⁵⁸ The Competition in Contracting Act requires that under most circumstances federal contracts be awarded on the basis of full and open competition in order to rely on natural competitive market forces for the government to garner the best service at the best price.⁵⁹ The GAO found that the government agencies generally complied with the laws. The urgent circumstances immediately prior, during, and after the war allowed for the waiver.⁶⁰ However, they found issues with the eleven task orders reviewed. Of the eleven task orders reviewed, the GAO found two in the scope of the original contract, seven were partially in the scope, and they

had “reservations” about the remaining two being within scope.⁶¹ The GAO found that the outlying nine would have been better awarded using other than full and open Justification and Approval to go to a sole source and excluded competition.⁶² As the situation and environment matures in Iraq the balance between meeting urgent wartime requirements and the use of full and open competition will shift towards demanding more competition in order for the government to get the best value.

The GAO determined the effectiveness of planning for logistic support contracts has varied widely during contingency operations. Although they found the Air Force use of AFCAP, the Navy’s use of CONCAP, and the U.S. Army Europe, use of LOGCAP planning generally successful, the GAO was more critical of USCENTCOM use of LOGCAP planning during the early stages of Operation Iraqi Freedom.

On the other hand, the Army Central Command did not follow guidance when planning for Operation Iraqi Freedom. The plan to support its military forces in Iraq was developed in May 2003 even though Army guidance recommends that a comprehensive statement of work be developed during the early phases of contingency planning. Additionally, even as it became clear that U.S. forces would remain in Iraq longer than originally anticipated, LOGCAP planning was still often ineffective, partly because the Army did not include the contractor in its planning, notwithstanding guidance to the contrary.⁶³

CHALLENGES

There are a number of challenges confronting the contracting efforts in rebuilding Iraq. Several of the most important are the strings attached to congressional appropriations, harsh working conditions, evolution of defining roles, force protection and security, and controlling cost. The congressional requirements stipulated in laws such as the Emergency Supplemental have been previously discussed. The restrictions to freely move funds from one account to another limits the U.S. ability to exploit changing circumstances. The harsh working conditions are another problem. Nothing happens easily in a desert, mostly primitive environment, especially outside of Baghdad, let alone a combat environment. Everything from finding qualified contractors within the country, to force protection, to the extreme weather poses obstacles to even the simplest of operations.

The next challenge is the time constraints. In essence, the coalition forces are in a race against time to “win the hearts and minds” of the population before the insurgents can instill fear and place questions in the minds of the population of the new government’s ability to protect and to govern. One of the benefits of the U.S. acquisition system is the transparency and fairness of the system. However, the downside to the openness and fairness is that it slows

down the contract award process. The U.S. must strike a balance to achieve quick victories to show the population the new government's ability to lead before disenchantment sets in. The insurgent attacks have had an effect on both the projects and the workers. Some companies have stopped work and pulled their workers out from fear of reprisals. This has sent cost upward, some estimates as high as 20 percent, caused construction delays to some projects while eliminating others. Then there are the second and third order effects. As Mr. Charlie Hess, PCO director, stated in a January 2005 press conference, "When insurgents damage oil pipelines so that electricity can't be produced, that curtails power to the branch plant so that you can't produce concrete. So you're going to have to do that in a less effective manner. And that increases materiel costs."⁶⁴

The final challenge is to control costs. Some of the factors that affect costs are: first, the number of requirements that must be met from food service to housing and the time in terms of sense of urgency to execute them. The second cost factor is the conditions under which the services must be provided, such as the security situation in Iraq, mission requirements, and limitations of the contractor to provide the services. The third cost factor is the lack of adequacy of government oversight such as having technical experts and performance evaluators monitoring the contractor to provide feedback with the contractor to correct deficiencies. Fourth, the quality of the task order packages such as clarity of statement of work, government cost estimate, and agreed upon up front assumptions upon which the proposal is based. Fifth, whether the sourcing method is military troop labor, host nation support, logistics support contract, or another contract source.⁶⁵

RECOMMENDATIONS

Based upon the work conducted in fulfillment of this research project, there are a number of recommendations that can be made to ensure more effective contract management. The recommendations not only support the near term rebuilding of Iraq but also support America's long term war against terror. The first recommendation is the need to improve the contracting jointness/ inter-agency process during contingency operations. Second involves the area of LOGCAP operations. The third recommendation is in the area of more adaptive congressional legislation.

The nature of future conflicts and acknowledged interdependencies between the services dictate that when America calls upon its armed forces to deploy in future contingencies it will be in a joint construct. As such, contingency contracting personnel must shed their respective service cloaks and work together to support the warfighting Combatant Commander. The

Department of Defense made great strides to accomplish this with the designation as the Army as the executive agent and then placing a general officer as the HCA. The designation of the Army as the executive agent for these efforts makes the most sense due to the preponderance of force support and rebuilding requirements in theater. Having one commander, as the HCA, allows for a unity of contracting effort and the equitable allowance of scarce resources.

The current framework, however, does not go far enough. There are still some restrictions on the ability of a single commander to ensure unity of effort acting under the Combatant Commander when the services still have individual Title 10 responsibilities. By providing more Title 10 funding authority to the combatant commander or allowing the combatant commander some temporary Title 10 responsibilities in specific congressionally mandated legislation during contingency operations will the combatant commander have the fiscal and legal wherewithal to force the services to conduct their actions in order to truly work as one in a joint environment. The natural parochialism established under Title 10 of giving the services basic responsibilities to train, equip, and maintain will continue to hinder the integrated development in a joint force.

Once the jointness piece of the puzzle is fixed, we then need to move into the inter-agency environment. All contracting officers work under the same U.S. codes and Federal Acquisition Regulations. Therefore, it would not matter who let the contract but the real question would be who would provide better oversight based on the situation. More DCMA involvement in joint doctrine development with follow on inter-agency procedures would provide a systems level solution to a complex problem.

Additionally, individual unit commanders need to be instructed in the importance of having a competent contracting officer's representative and how to interface with one. This knowledge would ensure effective oversight while meeting the commander's needs under the terms of the contract.

The second area of recommended improvements is in the area of LOGCAP management. Commander's and their staffs need to be better educated in the LOGCAP process, how it can help them, and have a more stringent process in place to ensure definitization requirements takes place earlier and do not drag out. One of the problems found in the GAO studies was the questionable designation that some of the task orders were proper and covered under the general terms of the contract. Although the LOGCAP office reviews the statements of work prior to them going over to the contractor for estimates, the reviewer may not be as familiar with the actual requirement. This could be due to not being in theater or a poorly written statement of work relative to the actual work desired. Therefore, one recommendation would be to

increase the level of awareness of the LOGCAP contract and what it can bring for the commander. Overview of the LOGCAP program and how to use it should be part of senior service college curricula and Colonel level pre-command courses.

The second recommendation concerning LOGCAP is to shorten the length of time given to definitize the scope of work and hold commanders responsible for not doing this in a timely manner. Lack of timely definitizing the scope of work can have a significant impact on contract costs and risks to the government. Since the LOGCAP contracts are a cost plus type contract, there is little motivation for the contractor to control costs as long as the contract is not definitized. The only cost the contractor would worry about is the ceiling price. The closer the actual dollars spent come to the amount available on contract, the less motivation the contractor has in controlling costs. This is because the incremental value of the incentives are much less to him compared to when the scope of work is definitized early on and the contractor has to perform for a longer length of time, with the majority of costs, still under the administration of any incentive clauses. The government can shift the risk back to the contractor by establishing a firm statement of work early or reducing the scope of each task order into more manageable pieces.

The third recommendation concerns possible changes to current legislation. The first change would provide more Title 10 authority to the Combatant Commanders with accompanying budget lines. This will provide the Combatant Commander his own funding and he would not have to rely on the services for support. By granting those two changes, Congress can assist the Department of Defense's transformation into a more joint force. Additionally, in a contingency environment such as Iraq the HCA would have total authority over all contracts being let in theater. The final change to legislation would be to reduce the restriction on the movement of funds to the 2004 Emergency Appropriations Act so that the PCO and Department of State can, in conjunction with the Iraqi government, adjust the funding lines depending on the ongoing situation.

These three recommendations cover a broad area. They include changes to the way the services conduct business in order to achieve greater jointness. Changes to existing support contracts to make them more reflective of requirements while reducing the risk to the government. Third, changes to legislation in order to make the necessary changes permanent so that our armed forces are better prepared to conduct operations in the future.

SUMMARY

The U.S., in partnership with the new sovereign Iraqi government and other coalition partners are executing the highly complex and costly task of rebuilding Iraq. All parties involved are investing considerable amounts of time, efforts, and money to ensure success. The success of this undertaking is paramount towards maintaining U.S. prestige around the world, continuing the war on terrorism, and allowing the people of Iraq to live in a peaceful, stable nation under good governance. There is a lot of work to be done. Although the U.S. and its coalition partners “won” the tactical and operational battles, this can still lead to a strategic “loss” if the post-conflict operations of providing security and rebuilding are poorly executed.

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